

**IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA**

<b>STATE OF OKLAHOMA, et al.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 05-CV-00329-GKF(PJC)</b>
	)	
<b>TYSON FOODS, INC., et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**STATE OF OKLAHOMA'S MOTION IN LIMINE TO  
PRECLUDE DEFENDANTS FROM REFERRING TO THIS ACTION  
AS ANYTHING OTHER THAN "THE STATE'S" LAWSUIT**

Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma and Oklahoma Secretary of the Environment J.D. Strong, in his capacity as the Trustee for Natural Resources for the State of Oklahoma ("the State"), respectfully moves this Court for an order precluding Defendants from referring to this action as anything other than "the State's" lawsuit in, without limitation, voir dire, direct examination, cross-examination and argument. Specifically, the State seeks an order precluding Defendants from: (1) referring to this lawsuit as "the Attorney General's lawsuit," "General Edmondson's lawsuit," or any similar phrases; and (2) referring to the party plaintiff to this lawsuit as anything other than "the State" or "Plaintiff." In support of this Motion, the State states as follows:

**I. Legal Standard**

"Evidence which is not relevant is not admissible." Fed. R. Evid. 402. "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401. Moreover, "[a]lthough relevant, evidence may be

excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Fed. R. Evid. 403.

## **II. Argument**

Despite the fact that it is the State, not Attorney General Edmondson, that is the plaintiff in this case and despite the fact that this Court has held as such, Defendants have repeatedly referred to the State as "plaintiffs" in their motions and briefing. *See, e.g.*, DKT #1872; DKT #1876; DKT #2031; DKT #2033; DKT #2050; DKT #2055; DKT #2057; DKT #2069; DKT #2079. Moreover, Defendants have referred to this lawsuit as the "the Attorney General's lawsuit," "the Attorney General's case" or words of similar phrasing. *See, e.g.*, July 5, 2007 Hearing Transcript, p. 7, line 7 ("attorney general's case"); p. 9, line 9 ("attorney general's claims"); p. 93, line 13 ("attorney general's lawsuit"). These references are inaccurate as a matter of law and represent an improper attempt to (1) characterize this lawsuit as something other than the State's lawsuit, (2) personalize this lawsuit, and (3) appeal to bias. As such, they should be precluded.

Attorney General Edmondson is not the plaintiff in this action. Rather, he is the lead attorney for the State. Indeed, Attorney General Edmondson is the chief law officer for the State. *See* 74 Okla. Stat. § 18. Section 18b of title 74 of the Oklahoma Statutes delineates the duties and powers of the Attorney General, which provides in pertinent part:

- A. The duties of the Attorney General as the chief law officer of the state shall be:
  - 1. To appear for the state and prosecute and defend all actions and proceedings, civil or criminal, in the Supreme Court and Court of Criminal Appeals in which the state is interested as a party;
  - 2. To appear for the state and prosecute and defend all actions and proceedings in any of the federal courts in which the state is interested as a party;

3. To initiate or appear in any action in which the interests of the state or the people of the state are at issue, or to appear at the request of the Governor, the Legislature, or either branch thereof, and prosecute and defend in any court or before any commission, board or officers any cause or proceeding, civil or criminal, in which the state may be a party or interested; and when so appearing in any such cause or proceeding, the Attorney General may, if the Attorney General deems it advisable and to the best interest of the state, take and assume control of the prosecution or defense of the state's interest therein;

\* \* \*

74 Okla. Stat. § 18b(A)(1)-(3). As chief law officer of the State, the Attorney General possesses complete dominion over all litigation in which he properly appears in the interest of the State. *State ex rel. Derryberry v. Kerr-McGee Corp.*, 516 P.2d 813, 818 (Okla. 1973).

Consistent with these powers and duties, on June 13, 2005, the State filed a complaint against Defendants for their pollution of the Illinois River Watershed in this Court. *See* DKT #2. While the complaint was brought "ex rel. W.A. Drew Edmondson in his capacity as Attorney General of the State of Oklahoma and Oklahoma Secretary of the Environment C. Miles Tolbert in his capacity as Trustee for Natural Resources of State of Oklahoma"<sup>1</sup> -- that is, "by or on the relation of" W.A. Drew Edmondson in his capacity as Attorney General of the State of Oklahoma and Secretary of the Environment C. Miles Tolbert in his capacity as Trustee for Natural Resources of State of Oklahoma, *see Black's Law Dictionary* (8th ed. 2004) -- the State is the real party in interest and the sole plaintiff in this case. *See* 74 Okla. Stat. 18b(A)(1)-(3); *cf. United States v. Northside Realty Associates, Inc.*, 324 F. Supp. 287, 291 (N.D. Ga. 1971) ("Although this suit was initiated by the [United States] Attorney General, the real party in interest is the United States. Such suits may be brought in the name of the sovereign to protect the interest of the sovereign in seeing that its laws are enforce[d]"); *State ex rel. Norvell v. Credit*

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<sup>1</sup> J.D. Strong, the present Secretary of the Environment, has been substituted for C. Miles Tolbert, who stepped down in 2008.

*Bureau of Albuquerque, Inc.*, 514 P.2d 40, 43 (N.M. 1973) (in suit brought *ex relatione* in the name of the state by the attorney general, the state is the proper party litigant and the attorney general is the attorney for the state). Indeed, the caption of the complaint and the text of the complaint clearly reflect that the State is the sole plaintiff. *See* DKT #2 (Complaint), #18 (First Amended Complaint), #1215 (Second Amended Complaint). Confirming this fact, the civil cover sheet that accompanied the complaint plainly lists Attorney General Edmondson as attorney for the State. *See* DKT #1. Further confirming this fact is that Attorney General Edmondson filed an entry of appearance as attorney for the State the same day. *See* DKT #3.

The final, and determinative, fact is that this Court has previously ruled that the plaintiff in this case is the State, not the Attorney General:

[T]he Attorney General is listed in the caption of this action solely because he is bringing the action on behalf of the State of Oklahoma. As such, the true party is the State of Oklahoma, not the Attorney General. This lawsuit is styled "ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma." The state, not the Attorney General is the real party in interest and is the Plaintiff in this action.

*See* DKT #1062 (Feb. 26, 2007 Protective Order, pp. 2-3).

In sum, as the foregoing makes clear, the State -- not the Attorney General -- is the plaintiff in this case. Indeed, this is a view shared within the State. *See, e.g.*, Ex. 1 (4/7/09 S. Thompson Depo.) (p. 12: testimony by executive director of ODEQ that "[i]n the time frame that the lawsuit was filed, we met with the governor, and we agreed that this was the State of Oklahoma's lawsuit. . . ."); *id.* (p. 14: "Simply the governor advised the agencies that he was in full concurrence with the suit, and that as agencies of state government, we would be expected to be a part of that suit"); Ex. 2 (4/13/09 M. Tolbert Depo.) (p. 100: testimony by former Oklahoma Secretary of the Environment that "the party to this litigation -- the plaintiff in this litigation is [the] State of Oklahoma").

There is simply no basis to refer to this case as anything other than the State's case. Other references would be legally inaccurate and constitute an improper appeal to bias. Moreover, such references would likely lead to confusion of the jury.

### **III. Conclusion**

WHEREFORE, premises considered, the State's motion for an order precluding Defendants from referring to this action as anything other than the State's lawsuit in, without limitation, voir dire, direct examination, cross-examination and argument, should be granted.

Respectfully Submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 5<sup>th</sup> day of August, 2009, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

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